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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,787	08/23/2006	Alan Gayne Emblin	187540/US (461124-109)	6382
75149 7590 12/08/2009 Dorsey & Whitney LLP Intellectual Property Department - SF Columbia Center 701 Fifth Avenue, Suite 6100 Seattle, WA 98101-7043				
EXAMINER				
FONSECA, JESSIE T				
ART UNIT		PAPER NUMBER		
3633				
MAIL DATE		DELIVERY MODE		
12/08/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,787

Applicant(s)

EMBLIN, ALAN GAYNE

Examiner

JESSIE FONSECA

Art Unit

3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 60-65 and 67-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60-65 abd 67-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB006)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings were received on 8/25/09. These drawings are accepted.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 60-61, 63, 65, 67-68 and 74-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Loghem et al. (US 3,668,460).

With regard to claims 60, 63, and 68: Van Loghem et al. discloses a stud (1) capable of use in panel form work for solid filled walls, the stud comprising:

a head (3) formed as a strip (figs. 1-2) capable of being bonded and/or fastened to an inner face of a panel facing sheet,

a pair of spaced, opposed flanges (4) formed along and extending away from a central portion of the head (3) the flanges defining a recess with inwardly directed teeth (5) capable of engagement of a spacer element, and

each flange (4) having an out-turned terminal lip (M) to guide passage of the spacer element into the recess.

The recess of Van Loghem et al. is capable of allowing passage of a suitably dimensioned spacer element, wherein the recess deforms the flanges and causes the inwardly directed teeth to engage the spacer element. Note that any solid material would inherently be able to elastically/plastically deform to certain degree before failure.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 68, Van Loghem et al. discloses a panel structure (13) comprising the stud (fig. 1).

With regard to claim 61: Van Loghem et al. discloses the width of the head (3) is substantially greater than the spacing of the teeth (5) of the flanges on the central portion of the head (3).

With regard to claim 65: Van Loghem et al. discloses two or more teeth (5) extending longitudinally along each flange (5) inside the recess (figs. 1-2).

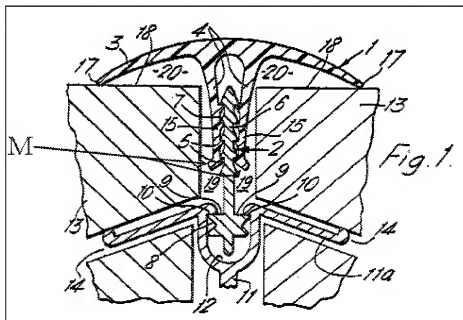


Fig. 1: Van Loghem et al. (US 3,688,460)

With regard to claim 74: Van Loghem et al. further disclose the out-turned terminal lips (M) define a lead-in path for aligning a tongue of the spacer element (fig. 1).

With regard to claim 75: Van Loghem et al. further disclose the out-turned lips (M) define a widening of the recess (fig. 1).

Claims 60-61, 63, 65 and 67-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Durbin (US 4,254,932).

With regard to claims 60, 63, and 68: Durbin discloses a stud (25) capable of use in panel form work for solid filled walls, the stud comprising:

a head (22) formed as a strip (fig. 1) capable of being bonded and/or fastened to an inner face of a panel facing sheet, and

a pair of spaced, opposed flanges (A) formed along and extending away from a central portion of the head (22) the flanges defining a recess (32) with inwardly directed teeth (37) capable of engagement of a spacer element. Examiner notes the central portion of the stud/base is interpreted to be the middle portion along the longitudinal length of the stud.

Durbin discloses each flange (A) has an out-turned terminal lip (38) (fig. 3) capable of guiding passage of the spacer element into the recess.

The recess of Durbin is capable of allowing passage of a suitably dimensioned spacer element, wherein the recess deforms the flanges and causes the inwardly

directed teeth to engage the spacer element. Note that any solid material would inherently be able to elastically/plastically deform to certain degree before failure.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 68, Durbin discloses a panel structure comprising the stud (fig. 1).

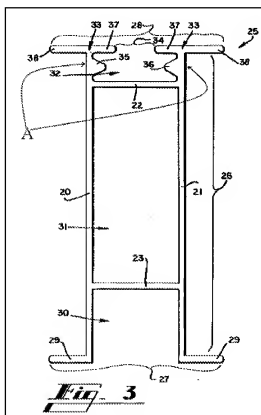


Fig. 3: Durbin (US 4,254,932)

With regard to claim 61: Durbin discloses the width of the head (20-21, 23, 29) is substantially greater than the spacing of the teeth (37) of the flanges on the central portion of the head.

With regard to claim 65: Durbin discloses two or more teeth (35-37) extending longitudinally along each flange (A) inside the recess (fig. 3).

With regard to claim 67: Durbin further discloses the head, flanges and teeth are formed integrally as an extrusion (fig. 3). Note that head, flanges and teeth being formed from extrusion is considered product by process.

Determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. MPEP 2113.

Claims 60-64, 67 and 69-73 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunn et al. (US 2002/0124508 A1).

With regard to claims 60, 63, and 68: Dunn et al. discloses a stud (40) capable of use in panel form work for solid filled walls, the stud comprising:

a head (41) formed as a strip (fig. 3A) capable of being bonded and/or fastened to an inner face of a panel facing sheet, and

a pair of spaced, opposed flanges (B) formed along and extending away from a central portion of the head (41), the flanges (B) defining a recess with inwardly directed teeth (inwardly turned flanges) capable engagement of a spacer element.

Dunn et al. discloses each flange has an out-turned terminal lip (C) capable of guiding passage of the spacer element into the recess.

The recess of Dunn et al. is capable of allowing passage of a suitably dimensioned spacer element, wherein the recess deforms the flanges and causes the inwardly directed teeth to engage the spacer element. Note that any solid material would inherently be able to elastically/plastically deform to certain degree before failure.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 60, Dunn et al. discloses a panel structure comprising the stud (fig. 1A).

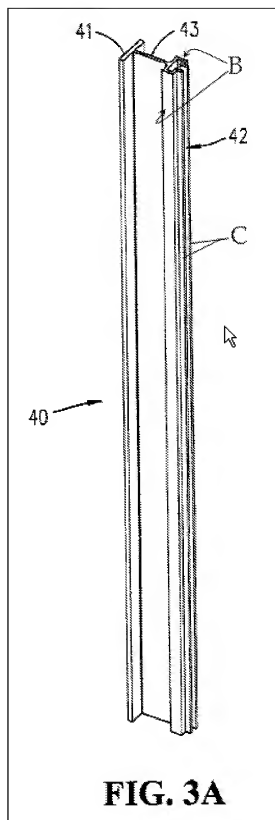


Fig. 3A: Dunn et al. (US 2002/0124508 A1)

With regard to claim 61: Dunn et al. further discloses the width of the head is substantially greater than the spacing of the teeth of the flanges on the central portion of the head (fig. 1B).

With regard to claim 62: Dunn et al. discloses the width of the head (41) is approximately seven times the spacing between the teeth (inwardly turned flanges) of the flange on the central portion of the head.

With regard to claim 64: Dunn et al. further discloses a cross sectional configuration, formed by the strip and the pair of flanges, which is substantially T-shaped (fig. 3A).

With regard to claim 67: Dunn et al. further discloses the head, flanges and teeth are formed integrally as an extrusion (fig. 3A). Note that head, flanges and teeth being formed from extrusion is considered product by process.

Determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. MPEP 2113.

With regard to claim 69: Dunn et al. further discloses a form work panel for solid filled walls, including:

a pair of facing sheets (11) spaced apart by a plurality of stud assemblies (30, 40),

the stud assemblies (30, 40) each having a pair of parallel strip-like studs (40) held together by a plurality of spacer elements (30),

the studs (40) each having a head (41) attached to a respective panel (11) and a pair of parallel flanges (B) which form a recess extending from a central portion (via web, 43) of the head (41) into the interior of the panel (fig. 4A), Note the recess is considered extending into the interior of the panel as it extends in the direction or toward the interior of the panel. Dictionary.com defines a *into* as "toward or in the direction of: *going into town*."

each spacer (30) in a stud assembly having tongues which engage respective recesses in the pair of studs (fig. 4A), and

each recess in a stud (40) having teeth (inwardly turned flanges formed on the flanges to engage the tongues of the spacer elements (figs. 4A-4B).

With regard to claim 70: Dunn et al. further discloses the head of each stud attached to a respective facing sheet is substantially wider than the width of the spacers (fig. 1B).

With regard to claim 71: Dunn et al. further the width of the head of each stud is more than double the width of the recess formed by the teeth of the flanges (figs. 1B & 3A). Note that the teeth are part of the flanges.

With regard to claim 72: Dunn et al. further discloses a panel according to claim 69, wherein each head has a relatively broad fiat surface attached to a respective panel by way of adhesive (claim 2 of Dunn et al.).

With regard to claim 73: Dunn et al. further discloses solid filled wall including a panel as claimed in claim 69 filled with concrete (par. 0021).

Claims 60-64 and 67-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Spera (US 5,233,807).

With regard to claims 60, 63, and 68: Spera discloses a stud capable of use in panel form work for solid filled walls, the stud comprising:

a head (16) formed as a strip capable of being bonded and/or fastened to an inner face of a panel facing sheet, and

a pair of spaced, opposed flanges (274) formed along and extending away from a central portion of the head (16), the flanges (274) defining a recess with inwardly directed teeth (inwardly extending protrusions, best shown in fig. 3) capable engagement of a spacer element.

Spera further discloses each flange has an out-turned terminal lip (fig. 3) capable of guiding passage of the spacer element into the recess.

The recess of Spera is capable of allowing passage of a suitably dimensioned spacer element, wherein the recess deforms the flanges and causes the inwardly directed teeth to engage the spacer element. Note that any solid material would inherently be able to elastically/plastically deform to certain degree before failure.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 68, Spera discloses a panel structure comprising the stud (fig. 1).

With regard to claim 61: Spera further discloses the width of the head (16) is substantially greater than the spacing of the flanges (274) on the central portion of the head (fig. 3).

With regard to claim 62: Spera further discloses the width of the head (16) is approximately seven times the spacing between the flanges (274).

With regard to claim 64: Note that strip and pair of flanges of Spera are substantially T-shaped in cross-section.

With regard to claim 67: Spera further discloses the head, flanges and teeth are formed integrally as an extrusion (fig. 3). Note that head, flanges and teeth being formed from extrusion is considered product by process.

Determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. MPEP 2113.

Response to Arguments

Applicant's arguments filed 8/25/09 have been fully considered but they are not persuasive.

Applicant argues that the internal wall of Durbin is not "adapted to be bonded and/or fastened to an inner face of a panel facing sheet".

Examiner disagrees, the claim is not specific as to how the head would be bonded and/or fastened to a panel. Examiner submits a fastening element can be driven into the head for securement to a panel. Alternatively the ends of the stud structure can be secured to the panel via fastening element such as a bracket or clip. Further, the head can be indirectly fastened to an inner face of panel facing sheet. If applicant's intention to define a stud in which the head is adapted to directly abut against and be fastened to the inner face of the panel, then the claims should be amended to clearly reflect that.

Applicant further argues that the inwardly turned flanges (37) would deflect and not the pair of flanges.

Examiner disagrees, depending on the configuration of the spacer element, the flanges would be capable of deflecting.

Note a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regard to Dunn et al., Applicant argues the flanges (B) are not "formed along and extending away from a central portion of the head".

Examiner disagrees, the head (41, flange) extends in a parallel orientation with the flanges (B), therefore meeting the limitation of the flanges being formed along the

head, where the flanges extend away from the central portion of the head (fig. 3A).

Examiner suggests amending the claims to further define how the flanges are formed along the head of the stud.

Applicant further argues the inwardly turned flange of Dunn et al. considered as teeth by the Examiner would not be intended "for engagement of a spacer element".

Applicant's argument is directed to the intended use of the stud, the structure of Dunn et al. is capable of performing applicant's intended use and therefore meets the claim.

Applicant further argues the inwardly turned flanges and the flanges (C) of Dunn et al. refer to the same element.

Examiner disagrees, the flanges (C) are not inwardly turned, but instead extend from the inwardly turned flanges to which they are perpendicular to as shown in fig. 3A.

Applicant argues that the internal web of Spera is not "adapted to be bonded and/or fastened to an inner face of a panel facing sheet".

Examiner disagrees, the claim is not specific as to how the head would be bonded and/or fastened to a panel. The arguments presented above with regard to Durbin are applicable.

Applicant further argues that the "inwardly turned protrusions" of Spera are not "inwardly directed teeth for engagement of a spacer element" as they adapted to retain a bolt head in place.

Applicant is arguing the intended use of Spera. As previously noted, if the prior art meets the structural limitations of the claim and is capable of performing the claimed intended use, then the prior art meets the claim.

Applicant argues the structure shown in Durbin would not act as a guide passage but would impede passage of the spacer in the channel.

Examiner submits the spacer element nor its configuration is claimed. As the channel provides a passage, Examiner maintains the passage is capable of guiding a spacer element in recess.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSIE FONSECA whose telephone number is (571)272-7195. The examiner can normally be reached on M-F 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571)272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. F./

Examiner, Art Unit 3633

/Robert J Canfield/

for D. Dunn, SPE of Art Unit 3633